IN THE HIGH COURT OF JUDICATURE, ANDHRA PRADESH
AT HYDERABAD

(Special Original Jurisdiction)

WEDNESDAY, THE NINTH DAY OF MARCH
TWO THOUSAND AND FIVE

PRESENT

THE HON'BLE MR JUSTICE M.H.S. ANSARI

and
THE HON'BLE MR JUSTICE T.CH.SURYA RAO

WRIT PETITION NO : 4434 of 2005

Between:

M/s. First leasing Company of India ltd., Hyderabad, rep. by its Assistant Vice President, Mr. J. Sathya Kumar.

..... PETITIONER

AND

1 The Commercial Tax Officer, Panjagutta Circle,

Hyderabad.
2 The Appellate Deputy Commissioner (CT),

Panjagutta Division, Hyderabad.
3 The Additional Commissioner (CT) Legal, A.P.,

Nampally, Hyderabad.

.....RESPONDENTS

Petition under Article 226 of the Constitution of India praying that in the circumstances stated in the affidavit filed herein the High

Court may be pleased to issue a writ of Certiorari or any other appropriate writ or order or direction quashing the order passed by the 3rd respondent in CCT's Ref. No.LIII(2)/1871/2004 dt. 16.2.2005 as arbitrary and unjustified and consequently restrain the 1st respondent from taking any coercive steps for recovery of the balance disputed tax of Rs. 7,90,130/- for the assessment year 2001-02, pending disposal of the appeal filed by the petitioner before the 2nd respondent and pass such other order.

Counsel for the Petitioner:MR.S.DWARAKANATH

Counsel for the Respondents: GP FOR COMMERCIAL TAX

The Court made the following :

O R D E R (Per TCSR,J)

Instant writ petition is directed against the order dated 16.2.2005 passed by the learned Additional Commissioner (CT) Legal, wherein and whereby he refused to grant stay.

2. The 1st respondent assessed the petitioner on the turnover for the

year 2001-02 as per Section 5-E of A.P.G.S.T. Act stating that it is a case of purchase within the State of A.P. and lease rentals within the State, repelling the contention that it was a case of interstate trade and commerce, deserving to be exempted. Questioning the said order, the petitioner carried the matter in appeal to 2nd respondent – Appellate Deputy Commissioner (CT), where the appeal is pending adjudication. Since the accompanied stay petition filed before the 2nd respondent was dismissed, petitioner approached the 3rd respondent and under the impugned order, as aforesaid, learned Additional Commissioner rejected the stay.

3. The question as to whether it is an interstate sale or sale within the State and whether it can be exempted or not, are disputed questions and are pending adjudication before the 2nd respondent. Therefore, we are not inclined to enter into the merits in this writ petition. Since the writ petition is directed solely against the rejection of the stay order, the writ petition has to be disposed of working out the equities in between the parties.

4. The learned counsel for the petitioner represents that substantial demand has already been paid by the petitioner out of Rs.24,74,846/-, leaving a balance of Rs.7,90,130/-. In view of the same, the request of the petitioner for grant of stay, in our considered view, shall have to be acceded and it is not a case where the usual order can be passed by directing the petitioner to deposit fifty per cent of the disputed tax.

5. In the result the writ petition is allowed and there shall be stay of collection of the balance disputed tax for the year 2001-02 pending disposal of the appeal before the 2nd respondent. The 2nd

respondent shall make an endeavor to dispose of the appeal in accordance with law by passing appropriate orders.

6. No order as to costs.

M.H.S.ANSARI,J

T.CH.SURYA RAO,J

AVS

DATE:09.03.3005

.....REGISTRAR

To

1 The Commercial Tax Officer,

Panjagutta Circle, Hyderabad.

2 The Appellate Deputy Commissioner (CT),

Panjagutta Division, Hyderabad.

3 The Additional Commissioner (CT) Legal,

A.P., Nampally, Hyderabad.

4 Two CCs to G.P. for Commercial Taxes,

A.P. High Court Buildings, (OUT).

5 Two CD copies.